

May 22, 2014

Daniel J. Schroeder  
Neumiller & Beardslee  
Attorneys and Counselors  
P O Box 20  
Stockton, CA 95203

Re: Your Request for Informal Assistance  
**Our File No. I-14-070**

Dear Mr. Schroeder:

This letter responds to your request for advice on behalf of the Premier Management Prepaid Medicines Consulting Group, Inc. (hereafter “Premier”) regarding the revolving door provisions of the Political Reform Act (the “Act”).<sup>1</sup> The Commission’s jurisdiction does not extend to other laws that may apply, such as the Public Contract Code Section 10411, thus we are not able to advise on the potential application of this section.

### QUESTIONS

Premier has a contract with the Department of Managed Health Care, Division of Plan Surveys (DPS) to conduct health plan surveys for licensing compliance purposes. You have asked whether Ms. Putnam may, as an employee of Premier and a former DPS employee, could be tasked with performing the health plan survey, assist with document review, interviews, and documentation of findings. Ultimately, Ms. Putnam would discuss the findings with the DPS and finalize a report of the survey for consideration by the DPS in making its determination.

Or would these appearances constitute an “*appearance or communication for the purpose of influencing*” administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property?

---

<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

## **CONCLUSIONS**

Conducting health plan surveys for licensing compliance purposes would not constitute an “appearance or communication to influence administrative or legislative action,” or an action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. Thus, Section 87406 would not prohibit Ms. Putnam from conducting health plan surveys for licensing compliance purposes on behalf of the DPS as an employee of Premier that has a consultant contract with DPS to assist in the conducting of the surveys.

## **FACTS**

Tammy Putnam is a former state employee of the Department of Managed Health Care, Division of Plan Surveys (DPS). Ms. Putnam was employed by DPS for over 15 years, much of the time as a Manager. Ms. Putnam left the employ of the DPS on January 30, 2014. Prior to that time her job responsibilities since January 1, 2009 included the following:

- Manage, direct, and supervise the activities of multi-disciplinary teams consisting of internal staff and medical consultants (i.e. physicians, nurses, former Health Plan executives).
- Plan and assign workload, set priorities, review work of staff and consultants, assess performance, and ensure staff development.
- Develop and implement external and internal organizational policies and procedures and audit tools.
- Establish objectives and operational criteria; maintain and schedule audit calendars.
- Establish and communicate performance and teamwork expectations to staff and consultants, including coaching and mentoring in areas not meeting expectations.
- Ensure staff is trained and observing Department policies, including sexual harassment and ethics training.
- Conduct staff performance evaluations and take disciplinary actions as necessary in observance of the Department’s Equal Employment Opportunity and Human Resource policies.
- Conduct recruitment and hiring, including exam panel participation/Certified as an Exam Chairperson.

California Managed Care law (Knox-Keene Health Care Service Plan Act) requires the DPS to conduct a routine survey of each licensed full service and specialty health plan at least

once every three years. The survey is a comprehensive evaluation of the plan's compliance with applicable laws and regulations.

Ms. Putnam is currently employed by Premier as a consultant. Premier has an existing contract with the DPS to assist in conducting the required health plan surveys. Ms. Putnam was not involved in the consulting vendor selection process or the execution of the vendor contract between Premier and the DPS. Additionally, Ms. Putnam, as an employee of Premier is not involved with the administration of the contract between Premier and the DPS, and is not involved with any related cost estimates or negotiations.

Pursuant to its contract with the DPS, Premier generally provides one to three consultants anywhere from ten to twelve times per year to assist in conducting health plan surveys. The surveys include pre-onsite document review, onsite document review and interviews, post-onsite documentation of findings, and discussions with the DPS to formalize and finalize a report of any observed deficiencies. The DPS makes all final determinations regarding any deficiencies, however consultant input and the report of findings contribute to those determinations.

As an employee of Premier, Ms. Putnam could be tasked with performing a health plan survey on behalf of the DPS. She would assist with document review, interviews, and documentation of findings. Ultimately Ms. Putnam would discuss the findings with the DPS and finalize a report of the survey for consideration by the DPS in making its determination. Premier is requesting advice as to whether Ms. Putnam is barred by the Public Reform Act's "revolving door" prohibitions from providing these services under her current employer's contract with the DPS.

## ANALYSIS

Public officials who leave state service are subject to two types of post-governmental restrictions under the Act, colloquially known as the "revolving door" prohibition and the permanent ban on "switching sides."

The first restriction is the "permanent ban" prohibiting a former state employee from "switching sides":

"No former state administrative official, after the termination of his or her employment or term of office, shall for compensation act as agent or attorney for, or otherwise represent, any other person (other than the State of California) before any court or state administrative agency or any officer or employee thereof by making any formal or informal appearance, or by making any oral or written communication with the intent to influence, in connection with any judicial, quasi-judicial or other proceeding if both of the following apply:

"(a) The State of California is a party or has a direct and substantial interest.

“(b) The proceeding is one in which the former state administrative official participated.” (Sections 87401.)

Section 87400(c) defines “Judicial, quasi-judicial or other proceeding” to mean “any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency....”

Your facts do not describe any judicial, quasi-judicial or other proceedings in which Ms. Putnam participated. Therefore, we do not further discuss application of the “permanent ban” to your facts.

The second restriction is the “one-year ban” prohibiting a state employee from communicating, for compensation, with his or her former agency for the purpose of influencing certain administrative or legislative action. (Section 87406, Regulation 18746.1.) Section 87406(d) specifically provides:

“No designated employee of a state administrative agency, any officer, employee, or consultant of a state administrative agency who holds a position which entails the making, or participation in the making, of decisions which may foreseeably have a material effect on any financial interest, and no member of a state administrative agency, for a period of one year after leaving office or employment, shall, for compensation, act as agent or attorney for, or otherwise represent, any other person, by making any formal or informal appearance, or by making any oral or written communication, before any state administrative agency, or officer or employee thereof, for which he or she worked or represented during the 12 months before leaving office or employment, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. For purposes of this paragraph, an appearance before a state administrative agency does not include an appearance in a court of law, before an administrative law judge, or before the Workers’ Compensation Appeals Board.”

As a former employee of DPS, Ms. Putnam is subject to the one-year ban. Thus, for one year after leaving state service, she may not represent any person by appearing before or communicating with any DPS officer or employee to influence administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property.

However, the one-year ban would only prohibit Ms. Putnam from appearing before or communicating with any officer or employee of any agency she worked for or represented during

the 12 months before leaving employment, and any state administrative agency which budget, personnel, and other operations are subject to the direction and control of DPS. Her appearances in connection with conducting health plan surveys for licensing compliance purposes are not appearances to influence administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. Therefore, Ms. Putnam would not be prohibited from conducting health plan surveys for licensing compliance purposes on behalf of the DPS as an employee of Premier that has a consultant contract with DPS to assist in the conducting of the surveys.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: John W. Wallace  
Assistant General Counsel  
Legal Division

JWW:jgl